

The Broadcast Team, Inc.  
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RE: CG Docket No. 02-278 Preemption

The Broadcast Team, Inc. is filing these comments in response to a request for comment disseminated by the Federal Communications Commission pursuant to 47 CFR §§ 1.415, 1.419. The Broadcast Team, Inc. is a teleservices network provider that has been in business since 1992. The Broadcast Team wishes to reiterate its position regarding the ongoing, and often debated, question: Does the FCC have exclusive rulemaking authority and jurisdiction over interstate telecommunications and does that authority preempt state law?

On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, which amended the Communications Act of 1934 by adding a new section, 47 U.S.C. § 227. The TCPA mandated that the Commission implement regulations to protect the privacy rights of citizens by restricting the use of the telephone network for unsolicited advertising. On September 17, 1992, the Commission adopted a *Report and Order* (CC Docket 92-90, FCC No. 92-443), which established rules governing unwanted telephone solicitations and regulated the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

The Broadcast Team reiterates its position regarding The Fax Ban Coalition's position regarding whether or not the TCPA has exclusive jurisdiction regarding interstate telecommunications. The Coalition is entirely correct in asserting that the FCC has exclusive regulatory jurisdiction over interstate facsimile transmissions.

When Congress enacted the TCPA, it extended federal authority over telemarketing by amending section 2(b) to give the Commission jurisdiction over both interstate and intrastate communications. When Congress did so it was noted that states lack jurisdiction over interstate communications. The Commission's *Report and Order* regarding the TCPA was accurate. Specifically, the Commission noted that states have jurisdiction over *intrastate* communications ONLY, while the Commission has exclusive jurisdiction over *interstate* calls. In a plain and unambiguous reading of the TCPA "nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive INTRASTATE requirements or regulations on, or which prohibits" the use of certain telemarketing practices. Section 227(e)(1) establishes that the states have no authority whatsoever over interstate communications.

Currently, the existing state regulation of interstate telemarketing is overwhelming. Numerous states have enacted rules that make no distinction between intrastate and interstate communications and these states are actively and aggressively enforcing those laws against interstate telemarketers and continue to pass new laws aimed at regulating those telemarketers. Because each State imposes different requirements for interstate communications, businesses and associations face difficulty in functioning on a national level to be in full compliance with each State's regulations.

Federal law requires a broad, jurisdictional approach to the regulation of interstate telemarketing. Congress has already determined that only the FCC has jurisdiction over interstate telemarketing communications. See the above reference report and order, ¶ 83-85. Additionally, Congress has clearly stated that the Commission has no legal authority to relinquish federal jurisdiction to the states.

This Commission has frequently exercised its authority to preempt state regulation and the courts have repeatedly affirmed this. In the past the Commission exercised its preemptive power regarding Vonage's DigitalVoice and other VOIP services. Correspondingly, the Commission should conclude here that state regulation of interstate facsimiles is inconsistent with the pro-competitive policy of preempting inconsistent state law. The Commission has the power to preempt state regulation of interstate telemarketing. The current process of determining preemption on a case by case basis is inefficient and is a waste of resources. By preempting state law the Commission can determine a case by case designation in deciding that a state's laws are NOT preempted. This would be the most efficient allocation of time and resources. Anything short of preemption will effectuate an impracticable system of inconsistent state law.

Sincerely,

Robert J. Tuttle  
CEO  
The Broadcast Team, Inc.